

REMARKS

Applicants thank the Examiner for the telephone interview granted July 12. During that interview, it was discussed with the Examiner whether the primary reference cited under 35 U.S.C. §103, namely Omae U.S. Patent 7,126,622 qualifies as prior art under 35 U.S.C. §102.

It was first pointed out that the '622 patent is not a statutory bar type reference since its publication date of November 11, 2004 is not more than one year earlier than Applicant's U.S. filing date which is his PCT filing date of October 24, 2003.

Secondly, it was noted that the '622 reference is not citable under 102(e) as a U.S. patent based on its filing date because the Omae filing date for purposes of 102(e) (MPEP 2136.03) is its U.S. national stage entry date of January 22, 2004 which is after Applicant's U.S. filing date of October 24, 2003 (the PCT publication WO 03/016064 was in the Japanese language and not English – therefore 102(e) does not apply – see MPEP 2136.03).

The Examiner indicated, however, that he was citing as the prior art reference the PCT publication WO 03/016064 based on its publication date of February 27, 2003. Applicant noted that Applicant's German priority date is October 24, 2002 which Applicant claims priority from. In the Office Action, the Examiner indicated that he had received Applicant's Certified Priority Document and Applicant's claim for priority under 35 U.S.C. §119. Therefore, in order to remove the PCT publication of Omae as a reference, Applicant submits herewith a Certified Translation of their

Priority Document. Having now performed the necessary steps to remove Omae and/or its corresponding PCT application, Applicant requests that the application be passed to issue since all of the prior art rejections of claims 16-31 were based on the primary reference of Omae.

Respectfully submitted,

 (Reg). #27,841

Brett A. Valiquet
Schiff Hardin LLP
Patent Department-6600 Sears Tower
Chicago, Illinois 60606
Telephone: 312-258-5786
Attorneys for Applicants
CUSTOMER NO. 26574

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